

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
AERONAUTICAL RADIO, INC.)	FCC File No. 0000970218
)	
Station WQBE420, Boston, Massachusetts)	

ORDER ON RECONSIDERATION

Adopted: November 25, 2005

Released: November 28, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. *Introduction.* On October 26, 2004, Industrial Wireless Technologies, Inc. (IWTI) filed a Petition for Reconsideration¹ of a September 27, 2004 action granting the above-captioned application submitted by Aeronautical Radio Inc. (ARINC). IWTI argues that the grant was improper because the proposed operational parameters for ARINC's station conflict with an IWTI station that should be afforded primary status. For the reasons set forth below, we deny the Petition.

2. *Background.* IWTI is the licensee of trunked Station WPPY499, Falmouth and Andover, Massachusetts, on, *inter alia*, frequency 937.9750 MHz. Originally, the license authorized operations only at Falmouth. On April 19, 2001, IWTI submitted to the Personal Communications Industry Association (PCIA) for frequency coordination an application to modify the license for Station WPPY499 to add a second site on frequency 937.9750 MHz at Andover. On April 24, 2001, the Commission received an application from Claiborne Distributors, Inc. (Claiborne) for authorization to use frequency 937.9750 MHz in East Boston, Massachusetts.² On May 24, 2001, PCIA forwarded IWTI's modification application to the Commission.³ Due to the short-spacing⁴ to Claiborne's East Boston application, however, PCIA classified IWTI's proposed Andover site as secondary.⁵ On June 12, 2001, Claiborne's application was granted, authorizing its proposed operation under a call sign of Station WPSL634. On July 23, 2001, IWTI's application to operate the Andover site on a secondary basis was granted.

3. On July 19, 2002, the Claiborne's license for Station WPSL634 was canceled at Claiborne's request.⁶ Subsequently, on July 22, 2002, ARINC filed an application to use frequency 937.9750 MHz at Logan International Airport in Boston.⁷ IWTI filed an objection to the ARINC application on September

¹ Petition for Reconsideration or, in the Alternative, Request for Set-Aside of FCC Action, filed by Industrial Wireless Technologies, Inc. on October 26, 2004 (Petition).

² FCC File No. 0000437301. The application was coordinated by the Industrial Telecommunications Association on April 24, 2001.

³ FCC File No. 0000480181. The application was coordinated by PCIA on May 22, 2001.

⁴ The Andover and East Boston sites are separated by approximately 22.6 miles. Primary co-channel 900 MHz stations generally must be separated by at least 70 miles. See 47 C.F.R. § 90.621(b)(4).

⁵ According to IWTI, PCIA failed to notify IWTI of such classification. Petition at 2.

⁶ See FCC File No. 0000967464.

⁷ FCC File No. 0000970218.

4, 2002.⁸ On September 24, 2004, the Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division (Division) granted the ARINC authorization for frequency 937.9750 MHz as Station WQBE420, without addressing the merits of the IWTI Objection. IWTI filed the instant Petition on October 26, 2004, requesting that the Commission reconsider the ARINC grant, or in the alternative, set aside the grant until the Commission acts on its original September 4, 2002 pleading.⁹

4. *Discussion.* As a preliminary matter, IWTI argues that the Administrative Procedure Act, the Communications Act of 1934, as amended, and the Commission's Rules required the Division to address the IWTI Objection prior to processing ARINC's application.¹⁰ We disagree. As IWTI acknowledges, petitions to deny do not lie against private land mobile radio (PLMR) applications.¹¹ As a matter of practice, the Division treats such filings as informal requests for Commission action pursuant to Section 1.41 of the Commission's Rules,¹² and ordinarily addresses such matters prior to acting on the application at issue.¹³ That does not mean, however, that an objecting party is *entitled* to a decision before the Division acts on the application. Indeed, the Commission has rejected the assertion that these "informal requests must be treated formally by the Commission."¹⁴ Nonetheless, because the present Petition reasserts the arguments raised in the IWTI Objection, we will address the merits of the IWTI Objection herein.

5. First, IWTI argues that its Andover application should have been granted on a primary basis, because it did not request secondary status and was not aware of the Claiborne application or of PCIA's classification of the Andover site as secondary.¹⁵ We agree with ARINC, however, at the time the Andover application was filed, IWTI could only seek secondary status due to the pending Claiborne application; thus, under the circumstances presented we find that PCIA provided the proper classification for the operations proposed in IWTI's application.¹⁶ The Division's actions were based on the submitted applications. Accordingly, the Division granted Claiborne a primary authorization and later granted IWTI a secondary authorization, as reflected in the Commission's Universal Licensing System (ULS) database.

⁸ See Informal Objection to Application and Request for Correction of Authorization, dated September 4, 2002 (IWTI Objection). ARINC submitted an opposition to the IWTI Objection on September 17, 2002. See Opposition of Aeronautical Radio, Inc., dated September 17, 2002 (ARINC September Opposition). IWTI replied to the ARINC September Opposition on October 15, 2002. See Reply to ARINC Opposition to Informal Objection to Application and Request for Correction of Authorization, dated October 15, 2002 (IWTI Reply).

⁹ Petition at 2. On November 12, 2004, ARINC filed an Opposition to the Petition, stating that the grant of ARINC's application. See Opposition of Aeronautical Radio, Inc. dated November 12, 2002 (ARINC November Opposition).

¹⁰ Petition at 4-5 (citing 5 U.S.C. § 555(e); 47 U.S.C. § 309(d); 47 C.F.R. § 1.945(d)).

¹¹ See *id.* at 2-3 n.2 (citing S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153, 8155 ¶ 5 (2001) (S&L)).

¹² 47 C.F.R. § 1.41.

¹³ S&L, 16 FCC Rcd at 8155 ¶ 5.

¹⁴ Landlink Communications, *Memorandum Opinion and Order*, 16 FCC Rcd 20552, 20556 ¶ 9 (2001); see also JPJ Electronic Communications, Inc., *Memorandum Opinion and Order*, 17 FCC Rcd 5512, 5516 ¶ 9 (2002) (wherein the Commission observed that it is not required to entertain informal requests).

¹⁵ See Petition at 2-3; IWTI Objection at 3-7.

¹⁶ See ARINC September Opposition at 2.

6. Next, IWTI states that its paper authorization does not reflect secondary status, and argues that any discrepancy between the paper authorization and the ULS must be resolved in favor of the paper authorization.¹⁷ This is incorrect. The Commission's Rules expressly provide that ULS constitutes the official licensing record, and supersedes any other record.¹⁸

7. Finally, IWTI states that once the Claiborne license was canceled, there was no basis for classifying the Andover site as secondary, so the Division should have "automatically and immediately" changed the status of IWTI's license.¹⁹ IWTI cites no authority for this novel, and incorrect, assertion. The cancellation of Claiborne's license did not result in the automatic conversion of IWTI's Andover site to primary status, nor should it have. Only through the filing of a modification application could IWTI seek to change the status of its Andover site.²⁰ Absent such a filing, IWTI's authorization could not be modified, under the circumstances presented.

8. *Conclusion.* In light of our determination that ULS correctly reflected secondary status for the Andover site of Station WPPY499, we conclude that ARINC's application for frequency 937.9750 MHz was properly coordinated and granted, because ARINC was not required to maintain any minimum separation from the Andover site. Therefore, based upon the record before us we conclude that there is no need to reconsider or set aside the grant of ARINC's application. Accordingly, we deny IWTI's Petition.

9. IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Industrial Wireless Technologies, Inc., on October 26, 2004, IS DENIED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

¹⁷ See Petition at 2-3; IWTI Reply at 5-6.

¹⁸ See 47 C.F.R. § 1.911.

¹⁹ See Petition at 3 n.6; IWTI Reply at 7.

²⁰ We nonetheless note that an exception would have been if IWTI's license had a special condition that rendering its operations secondary to Claiborne until the Claiborne license canceled, expired, or terminated. However, IWTI did not have such a special condition on its license.